



## West Virginia Withholding Requirements for Sales of Real Property by Nonresidents

*This publication is intended to provide basic information regarding compliance with the withholding requirements imposed by W. Va. Code § 11-21-71b. This publication is meant to be a source of general information and not a substitute for tax laws or regulations.*

Senate Bill 2009, enacted during the November 2006 special legislative session, added a new section (§ 11-21-71b) to the West Virginia Personal Income Tax Code.

This new provision states that for taxable years beginning on or after January 1, 2008, a real estate reporting person is required to withhold income tax on sales or exchanges of West Virginia real property and associated tangible personal property when the seller is a nonresident individual or entity. Withholding is only required when the sale causes a change of ownership on the land books of a county assessor.

The term "nonresident entity" is defined as an entity that is not formed under the laws of West Virginia and is not qualified or registered with the State Tax Commissioner to do business in West Virginia. If the entity holds a current West Virginia business registration certificate, no withholding is required.

The "real estate reporting person" is any of the following persons involved in the real estate transaction, in the order stated below:

1. The person (including any attorney or title company) responsible for closing the transaction,
2. The mortgage lender,
3. The seller's broker,
4. The buyer's broker, or
5. Such other person designated in regulations prescribed by the U.S. Secretary of the Treasury (Treasury Regulation 26 CFR § 1.6045-4).

The buyer of the property is not the real estate reporting person (and so is not required to withhold personal income tax on the transaction) unless there is no attorney, mortgage lender or broker involved in the sale.

"**Total payment**" is defined as the total sales price paid to the transferor less:

1. debts of the transferor secured by mortgage or other lien on the property being transferred that are being paid upon the sale or exchange of the property, **and**
2. other expenses of the transferor arising out of the sale or exchange of the property and disclosed on a settlement statement prepared in connection with the sale or exchange of the property, not including adjustment in favor of the transferee.

"**Total payment**" does not include adjustments in favor of the transferor that are disclosed on a settlement statement prepared in connection with the sale or exchange of the property.

The "**amount to be withheld**" is either:

1. 2.5% of the total payment to a nonresident individual or entity who sells or exchanges real property located in West Virginia after December 31, 2007, **or**
2. 6.5% of the estimated capital gain derived from the sale or exchange.

The amount of tax withheld must be paid to the real estate reporting person before the deed or other instrument transferring title to the realty is presented for recordation or filing in the county clerk's office. The withheld amount must be remitted to the State Tax Commissioner within 30 days after it is withheld.

There are 6 statutory "**exceptions**" from withholding under this provision:

1. The Transferor is a resident or a resident entity in West Virginia.
2. If the Transferor presents to the real estate reporting person, a certificate issued by the State Tax Commissioner stating:
  - a. No tax is due from the transferor in connection with that sale or exchange of property; **or**
  - b. A reduced amount of tax is due from the transferor in connection with that sale or exchange of property and stating the reduced amount that should be collected by the real estate reporting person before recordation or filing; **or**
  - c. The transferor has provided adequate security to cover the amount required to be withheld.
3. The transfer is pursuant to a foreclosure of a mortgage deed of trust or other lien instrument or pursuant to a deed in lieu of foreclosure.
4. The transferor is a governmental agency.
5. The property is the principal residence of transferor.
6. The property is transferred pursuant to a deed or other instrument of writing that includes a statement of consideration that indicates consideration payable for the transfer is zero.

Applicable reporting forms can be found on our website at <http://www.wvtax.gov>.

Taxpayer Service Representatives are available between 8:00 a.m. and 5:00 p.m. on business days at **1-800-WVA-TAXS (1-800-982-8297) or TDD (hearing impaired) 1-800-282-9833.**